

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JACOB NOCITA,

**Plaintiff,**

v.

## HOUSING AUTHORITY OF GRAYS HARBOR COUNTY,

## Defendants.

Case No. C23-6092 DGE

## ORDER TO SHOW CAUSE

This matter comes before the Court on Plaintiff Jacob Nocita's motion to proceed *in forma pauperis*. Dkt. 1. Having reviewed Plaintiff's motion and his proposed complaint, the Court declines to grant Plaintiff's motion at this time. Plaintiff may, by January 12, 2024, either: (1) explain and show cause why the complaint should not be dismissed, or (2) file an amended complaint.

## DISCUSSION

#### A. Standard

The district court may permit indigent litigants to proceed IFP upon completion of a proper affidavit of indigency. See 28 U.S.C. §1915(a). However, the court has broad discretion in denying an application to proceed IFP. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), cert. denied 375 U.S. 845 (1963). The Court must subject each civil action commenced pursuant to 28 U.S.C. § 1915(a) to mandatory screening and order the sua sponte dismissal of any case that is “frivolous or malicious,” “fails to state a

1 claim on which relief may be granted,” or “seeks monetary relief against a defendant  
 2 who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*,  
 3 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are  
 4 not limited to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en  
 5 banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua  
 6 sponte dismiss an IFP complaint that fails to state a claim).

7 An IFP complaint is frivolous if “it ha[s] no arguable substance in law or fact.”  
 8 *Tripati v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987) (citing *Rizzo v.*  
 9 *Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *see also Franklin v. Murphy*, 745 F.2d  
 10 1221, 1228 (9th Cir. 1984). A pro se plaintiff’s complaint is to be construed liberally, but  
 11 like any other complaint it must nevertheless contain factual assertions sufficient to  
 12 support a facially plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)  
 13 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim for relief is  
 14 facially plausible when “the plaintiff pleads factual content that allows the court to draw  
 15 the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*,  
 16 556 U.S. at 678.

17 Unless it is absolutely clear that no amendment can cure the defects of a  
 18 complaint, a pro se litigant is entitled to notice of the complaint’s deficiencies and an  
 19 opportunity to amend prior to dismissal of the action. See *Lucas v. Dep’t of Corr.*, 66  
 20 F.3d 245, 248 (9th Cir.1995). Leave to amend need not be granted “where the  
 21 amendment would be futile or where the amended complaint would be subject to  
 22 dismissal.” *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

1 To state a claim under § 1983, a plaintiff must show that: (1) he suffered a  
2 violation of rights protected by the Constitution or created by federal statute, and (2) the  
3 violation was proximately caused by a state actor. See *Crumpton v. Gates*, 947 F.2d  
4 1418, 1420 (9th Cir. 1991) (citation omitted). The first step in a § 1983 claim is therefore  
5 to identify the specific constitutional right allegedly infringed. *Manuel v. City of Joliet, Ill.*,  
6 137 S. Ct. 911, 920 (2017) (citation omitted).

7 Furthermore, a “plaintiff must plead that each Government-official defendant,  
8 through the official’s own individual actions, has violated the Constitution.” See *Iqbal*,  
9 556 U.S. at 676; see also *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (“A  
10 person ‘subjects’ another to the deprivation of a constitutional right, within the meaning  
11 of section 1983, if he does an affirmative act, participates in another’s affirmative acts,  
12 or omits to perform an act which he [or she] is legally required to do that causes the  
13 deprivation of which complaint is made.” (citation omitted)). In other words, plaintiff must  
14 allege a defendant’s personal involvement in violating plaintiff’s civil right(s).

15       B. Plaintiff’s Proposed Complaint

16       Here, Plaintiff appears to claim that officials of Grays Harbor County Housing  
17 Authority have violated his rights as a tenant and under the Violence Against Women  
18 Act (“VAWA”). He states that he notified them that he was a victim of domestic violence  
19 and requested to be relocated. Defendants allegedly did not relocate him or his children.

20       To the extent Plaintiff is attempting to bring a claim under VAWA, this would be a  
21 futile claim. See *United States v. Morrison*, 529 U.S. 598, 627 (2000) (finding that the  
22 statute is constitutional); *United States v. Allen*, 341 F.3d 870, 880 (9th Cir. 2003) (the  
23 Supreme Court “in *Morrison* struck down 42 U.S.C. § 13981, a provision of the VAWA

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1 that provided a federal civil remedy for victims of gender-motivated violence"); see also,  
2 e.g., *Barzyk v. Marsico*, No. 1:14-CV-2017, 2015 WL 136622, at \*4 (M.D.Pa. Jan. 8,  
3 2015) (dismissing a pro se plaintiff's VAWA claim upon conducting a section 1915  
4 review because the Supreme Court held that the VAWA was unconstitutional). To the  
5 extent that Plaintiff alleges only a VAWA violation, this claim would fail and Plaintiff's  
6 complaint would be futile.

7 Plaintiff also states that local law enforcement conducted unlawful searches and  
8 seizures of his property and his home which led to the arrest of his spouse. He did not  
9 provide any other details, such as dates or the names of the law enforcement officers.  
10 "Unreasonable searches and seizures" are prohibited under the Fourth Amendment. An  
11 action under § 1983 seeking damages for an alleged illegal search and seizure of  
12 evidence upon which criminal charges are based is barred until the criminal charges  
13 have been dismissed or the conviction has been overturned. *Harvey v. Waldron*, 210  
14 F.3d 1008, 1015–16 (9th Cir. 2000). It is unclear, however, if Plaintiff even intended for  
15 this to be a separate claim or if he provided this detail to support his claim under VAWA.

16 Finally, Plaintiff states that he is bringing his claims against "Theresa" and  
17 "Roma" in their official capacities, only. Plaintiff's official-capacity claims against  
18 defendants must be treated as claims against the "entity of which [they are] agent[s],"  
19 namely, Grays County. See *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S.  
20 658, 691 n.55 (1978). However, Plaintiff did not name Grays County as a defendant.

21 Furthermore, "[t]o prevail on a claim against a municipal entity for a constitutional  
22 violation, a plaintiff must show that an official's action that caused the plaintiff's injury  
23 was pursuant to [an] official municipal policy [or custom] of some nature." *Kirkpatrick v.*

1      *Cty. of Washoe*, 843 F.3d 784, 793 (9th Cir. 2016) (en banc) (citation and internal  
2      quotation marks omitted).

3        Here, Plaintiff has alleged no such policy or custom. Moreover, as discussed  
4 above, Plaintiff has yet to allege an underlying constitutional violation. *City of Los  
5 Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Lockett v. Cty. of Los Angeles*, 977 F.3d  
6 737, 741 (9th Cir. 2020) (“Monell claims [] require a plaintiff to show an underlying  
7 constitutional violation.”).

## CONCLUSION

9 Accordingly, given the deficiencies addressed above, the Court will not grant  
10 Plaintiff's application to proceed *in forma pauperis* at this time. If Plaintiff chooses to file  
11 an amended complaint, he is advised that an amended complaint supersedes  
12 (replaces) the original complaint and, thus, the amended complaint must be complete in  
13 itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546  
14 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original complaint  
15 is irrelevant; an amended pleading supersedes the original”).

1 Plaintiff's amended complaint must be filed by January 12, 2024, and must  
2 contain all claims, defendants, and factual allegations that Plaintiff wishes to pursue in  
3 this lawsuit. The Court further instructs the Clerk to re-note Plaintiff's motion to January  
4 12, 2024.

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6 Dated this 28th day of December, 2023.  
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10 Theresa L. Fricke  
United States Magistrate Judge  
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